the ceremony was without effect, there was no marriage. *Accord, Cartwright v. McGown* (1887) 121 Ill. 388, 12 N. E. 737. In both the cases last cited, however, one of the parties was lacking in good faith at the outset, and *Collins v. Voorhees* has since been distinguished on that ground. *Robinson v. Robinson, supra.* But the real ground of the *Robinson* case, as of the principal case, seems to be that the ruling consideration is not logic, but a public policy which favors sustaining marriage whenever possible. This principle has been applied elsewhere to cases in which one or even both of the parties knew of the impediment at the beginning of the cohabitation. *Yates v. Houston* (1848) 3 Tex. 433, 450; *De Thoren v. Attorney General* (1876, H. of L.) 1 App. Cas. 686; *The Bread-albane Case* (1867) L. R. 1 H. L. Sc. 182. See also dissenting opinion in *Collins v. Voorhees, supra,* 47 N. J. Eq. 315, 20 Atl. 676. The holding on the second point in the principal case indicates a readiness, not perhaps to overrule *Collins v. Voorhees* in terms, but practically to abandon the distinction based on good faith at the outset, by finding a new consent on evidence hardly differing from that held insufficient in the earlier case. Since society is interested primarily in the marriage *status*—in the contract only as a definite entry upon that *status*—there seems to be no sound reason why, in states which recognize common law marriages, consent to *be,* rather than to *become,* husband and wife should not in all cases be sufficient to constitute the relation.

SALES—STATEMENT THAT GOODS HAD BEEN SHIPPED—WHETHER OR NOT A "WARRANTY."—The plaintiff sold a carload of apples to the defendant, and stated in a letter which was held to be a part of the contract that the apples had been shipped "yesterday." The plaintiff believed this statement to be true, but in fact the plaintiff's vendors, who were to make the shipment, did not forward the apples to the defendant until the next day. The defendant refused to accept the apples resting his refusal on the unfounded claim that they did not come up to the agreed weight. In an action for the price the defendant relied on the fact the apples were not shipped at the time stated. *Held,* that the defense must fail, both because the statement in question was made merely to identify the particular shipment, and the delay was an immaterial variation which gave no privilege of rejecting the goods, and because, if available at all, this objection was waived by failure to assert it immediately on learning the facts. *DeHoff v. Aspegren* (1917, App. T.) 166 N. Y. Supp. 1019.

In the case of a charter party a statement in the contract that the ship had sailed "three weeks ago" has been held to be a warranty and not a mere representation. *Ollive v. Booker* (1847) 1 Exch. 416; *accord, Oppenheim v. Fraser* (1876, Q. B. Div.) 34 L. T. Rep. N. S. 524 ("now at Rangoon"). A warranty has been defined, in effect, as a statement descriptive of the subject-matter or of some material incident, such as the time or place of shipment, equivalent to an express condition precedent, so that if found to be untrue in fact, it justifies the other party in repudiating the entire contract. See *Norrington v. Wright* (1885) 115 U. S. 188, 203; 6 Sup. Ct. 12, 14, and cases above cited. Whether such a statement is to be regarded as a warranty or a mere representation is treated as a question of construction, depending on the court's judgment of the materiality of the statement. In cases involving so-called "implied conditions" it is generally declared that time is presumptively of the essence in all mercantile contracts. See for example *Norrington v. Wright, supra; Salmon v. Boykin* (1887) 66 Md. 541, 7 Atl. 701. It is obvious that this rule, followed blindly, would often produce unjust results. In most of the cases decided under it, however, the delay was in fact substantial and serious; and it is to be hoped that the law will eventually reject the artificial theory of implied "conditions" where no condition is expressed, and treat the defense as depending simply on

the seriousness of the breach. See Williston, *Sales,* sec. 453, and compare the discussion of *Helgar Corp. v. Warner's Features, Inc.* (1918, N. Y.) 58 N. Y. L. J. 1780, on page 697 of this number. But such an equitable doctrine is hardly applicable to the case of express conditions. The intent should therefore be very clear before an ambiguous phrase is construed as equivalent to such a condition. Indeed since the notion of a "warranty" as virtually amounting to an express condition has been chiefly confined to insurance and maritime contracts, the courts might well decline to extend it any further. The result in the principal case is therefore to be commended, though the decision would be more satisfactory had it been rested squarely on the first ground.

TAXATION—INHERITANCE AND TRANSFER TAXES—SHAREHOLDERS' INTEREST IN MASSACHUSETTS BUSINESS TRUST.—The testator died domiciled in Massachusetts; part of the estate consisted of shares in a business trust whose trustees were also domiciled there; the trust property was a factory and materials situated in New Hampshire. Objection was made to the assessment of the Massachusetts succession tax on so much of the shares "as constituted an equitable interest in foreign real estate." *Held,* that where the trust fund was ultimately to be converted into personalty for distribution, and where it from the beginning consisted of mixed realty and personalty, it must be treated as converted into personalty from the beginning, so that a succession tax at the domicile of the decedent shareholder was valid. *Dana v. Treasurer & Recvr. Genl.* (1917, Mass.) 116 N. E. 941. See COMMENTS, p. 677.

TORTS—INDUCING BREACH OF CONTRACT—ENGAGEMENT TO MARRY.—The defendants maliciously, and for the purpose of advancing their own pecuniary interests, induced the plaintiff's fiancé to break his engagement with her. *Held,* that these facts gave the plaintiff no right of action. *Homan v. Hall* (1917, Neb.) 165 N. W. 881.

Authorities in point are scarce and unsatisfactory. The court relies chiefly on a passage in Cooley, which in turn cites no authority. Cooley, *Torts* (2d ed.) 277. The leading case for the doctrine that inducing a breach of contract may constitute a tort is *Lumley v. Gye* (1853, Q. B.) 2 E. & B. 216. There are *dicta* in English cases, containing elaborate discussions of this doctrine, which ridicule the idea of recovery in a case like the principal case. *Allen v. Flood* (1897, H. of L.) [1898] A. C. 1, 35; *Glamorgan Coal Co. v. South Wales Miners' Federation* (C. A.) [1903] 2 K. B. 545, 577; *National Phonograph Co. v. Edison Bell Cons. Phonograph Co.* (1906, Ch. D.) [1908] 1 Ch. 335, 350. Finally, there is an American case denying recovery, which also based its decision on the passage in Cooley. *Leonard v. Whetstone* (1903) 34 Ind. App. 383, 68 N. E. 197. The doctrine of *Lumley v. Gye* has been accepted by the United States Supreme Court and by most of our states, with some statutory modifications. *Angle v. Chicago, St. Paul, etc., Ry. Co.* (1893) 151 U. S. 1, 14 Sup. Ct. 240, and cases collected in note, Ann. Cas. 1916 E. 608. At first the doctrine was applied only to labor contracts, but the present tendency is to extend its scope. *Moody v. Perley* (1915, N. H.) 95 Atl. 1047. With reference to actions for interfering with engagements of marriage, it is submitted that there is room for analysis and differentiation with regard to the motives of the defendant and the relationship between the persons concerned. The allowance of the action must ultimately rest on considerations of policy. While it is conceivable that recovery against parents or near relatives acting in good faith from disinterested motives ought to be denied on the ground of privilege, it is difficult to see why recovery should not be allowed against persons standing in no such relation and